

Poarch Band of Creek Indians

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November 15, 2006

Philip N. Hogen, Chairman
National Indian Gaming Commission
1441 L Street, NW
Washington, DC 20005

Re: Proposed Definitions and Game Classification Standards

Dear Chairman Hogen and Commissioner Choney,

We appreciate the opportunity to comment on the National Indian Gaming Commission's ("NIGC") proposed amendments regarding the classification of games under the Indian Gaming Regulatory Act ("IGRA") as published in the Federal Register on May 25, 2006 ("Proposed Rules"). For the reasons stated below, the Poarch Band of Creek Indians ("Tribe") objects to the Proposed Rules and strongly urges that they be withdrawn in their entirety.

First and foremost, the Tribe objects to the NIGC's current action as it serves only to further restrict the scope of class II gaming. The Proposed Rules contain a host of requirements never before needed for a game to fall within the category of class II gaming. Because these requirements are new, existing games do not satisfy them, and thus, no game currently classified as class II by the courts, or even the NIGC itself, will survive this rulemaking. The Tribe strenuously objects to the fact that if these Proposed Rules are finalized, all existing games *will automatically lose their class II status* and thus require a Tribal-State Compact for their continued operation. No court ruling or congressional enactment justifies such a dramatic change of course.

The Proposed Rules are particularly problematic for our Tribe because of the state's continued unwillingness to negotiate for the very same games that are currently being played elsewhere within the state. We resent the fact that we will be forced to replace all games within our gaming operations with slower and less profitable games, while our competitors continue to flourish. In enacting IGRA, Congress placed only three requirements on a game of bingo, and the federal courts have held that these three requirements "constitute the sole *legal* requirements for a game to count as class II bingo."¹ Congress intended that tribes have "maximum flexibility" to utilize class II gaming for the purpose of economic development. Given that technology is never intended to limit the commercial success of a product or an industry, Congress clearly expected that Indian gaming would grow and evolve with advancing technology. By further restricting the types of games that the Tribe may operate, our ability to

¹ U.S. v. 103 Electronic Gaming Devices, 223 F.3d 1091, 1096, 1097 (9th Cir. 2000).

compete is impacted even further. These Proposed Rules make our ongoing struggle to maintain equal footing with our competitors an impossibility.

Because of the unique situation in which we find ourselves, our Tribe will clearly be among those most impacted if these Proposed Rules are finalized. We, therefore, begin our discussion here.

THE PROPOSAL'S IMPACT ON THE TRIBE

The Poarch Band of Creek Indians descends from a segment of the original Creek Nation consisting of tribal members that were not removed from their tribal lands. The Tribe was federally recognized in 1984, its members having lived together for over 150 years near Atmore, Alabama. Upon federal recognition, the Tribe began to reverse the cumulative effects of a century of social segregation, discrimination, and poverty.

The Tribe has conducted gaming in the State of Alabama for over twenty years, beginning with the Creek Bingo Palace, which opened in Atmore, Alabama, in April 1985. Since then, the Tribe has opened two additional gaming operations: one in Wetumpka, Alabama, which opened in November 2001, and one in Tallapoosa, Alabama, which opened in September 2002.

Gaming is critical to the Tribe's viability because it fuels so many other tribal endeavors. As permitted under IGRA, the Tribe allocates discretionary monies to satisfy other needs, including the betterment of our members and community through the provision of education, health care, and housing, land acquisition and improvement, and fire and police protection. Economic ventures such as gaming provide a strong economic base for the Tribe and facilitate additional economic development, job creation, and an overall improved quality of life for this rural southern region. Tribal gaming revenues are now a vital source of support for the tribal community and its roughly 2,350 members. Its economic benefits reach well beyond the Tribe and its members to surrounding communities in at least five Alabama counties. For example, most of the Tribe's nearly 800 gaming-related jobs are held by non-Indians.

For the past fifteen years, a series of challenges have threatened the Tribe's ability to conduct gaming on an equal footing with our competitors. In 1990, the State of Mississippi legalized dockside casino gaming. Casinos in the gulf regions of Biloxi and Gulfport in particular have had a devastating impact upon the Creek Bingo Palace. A large percentage of our customers come to us from Mobile, Alabama, which is situated almost equidistant between Atmore, Alabama, and Biloxi, Mississippi. When faced with an hour drive in either direction, the majority of our customers naturally chose the full-scale casinos of Biloxi over our bingo hall. The result was devastating for the Tribe, as traditional bingo transformed from a profitable venture to one that barely broke even. Our ability to fund social and economic programs was considerably reduced.

Three years later, the State of Mississippi approved a class III gaming compact with the Mississippi Band of Choctaw Indians. The Mississippi Choctaws now operate two full-scale casinos that are located only 300 miles from our northern gaming facilities. The Choctaw casinos serve as direct competition and in fact have stated that the majority of their customers come to them from Alabama – a reason, perhaps, for their well-publicized opposition to the expansion of gaming in our state.

Developments within the State of Alabama, however, have proven even more harmful. As you are well aware, the Tribe has been attempting to negotiate a Tribal-State Compact with the state since 1990. Though the state permits a broad range of activities that, if offered on Indian lands would fall within the category of class III gaming, it has chosen to ignore the Tribe's requests to negotiate. Most troubling is the fact that in recent years, the scope of gaming within the state has grown exponentially, making it increasingly difficult for the Tribe to compete or even keep pace. The Tribe now finds itself at a severe competitive disadvantage.

In November 2003, voters in two Alabama counties approved constitutional amendments authorizing the operation of bingo games by nonprofit organizations for charitable and educational purposes. Macon County, which is a mere 30 miles from the Tribe's Wetumpka facility, is home to the Victoryland Dog Track, which, interestingly, is the only qualifying "charitable" entity within the county. The track now operates approximately 3,500 electronic bingo machines – machines whose operation is forbidden to the Tribe.

While the responsibility of determining whether a gaming activity is lawful in Indian country falls to the NIGC, in the State of Alabama, this responsibility falls to those within the state. Because the laws under which the state and the NIGC review the legality of certain activities differ, the outcome of their analyses is also bound to differ. That is indeed the case here and, as a result, while the bingo games authorized for use elsewhere within the state are being operating lawfully under state law, they contain features that, in the eyes of the NIGC, transform the game into one that is class III gaming. The most obvious of these features is auto-daub, which will be discussed at length later in this letter.

Because the state continues to refuse to negotiate with the Tribe, we remain limited to the operation of class II games. As a result, during the very time at which non-Indian operators within the state have increased their use of games that are forbidden to the Tribe, the scope of class II gaming in Indian country appears to be shrinking. The game is being slowed to the point where it will no longer be economically viable – defeating the original intent of Congress and returning the tribes to the days of grey-market vendors. The NIGC should avoid placing tribes at a competitive disadvantage. Tribes should be allowed to operate not only those games permitted by IGRA, but also those games permitted elsewhere within the state. Recent experience illustrates the financial harm brought by an arrangement to the contrary.

As you will recall, during the very time at which state voters were expanding the scope of gaming within Alabama, the Tribe was forced to scale-back both the type and variety of games available for our patrons. In early 2004, the NIGC issued a letter to the Tribe identifying certain games that we had been operating as "questionable." Though we disagreed with the NIGC's

assertions, in May 2004, the Tribe removed 76 games and modified approximately 600 others to satisfy the NIGC's concerns. The Tribe's efforts to work with the NIGC resulted in a 34% decrease in revenue and a 56% decrease in net income, impacts that are illustrated within Figures 1 and 2 below.

Figure 1.

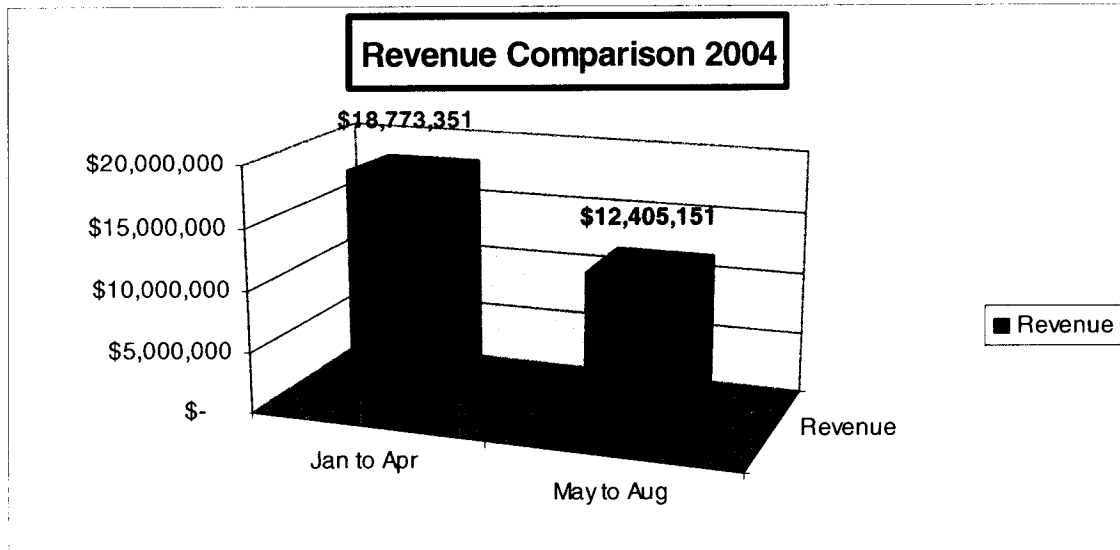
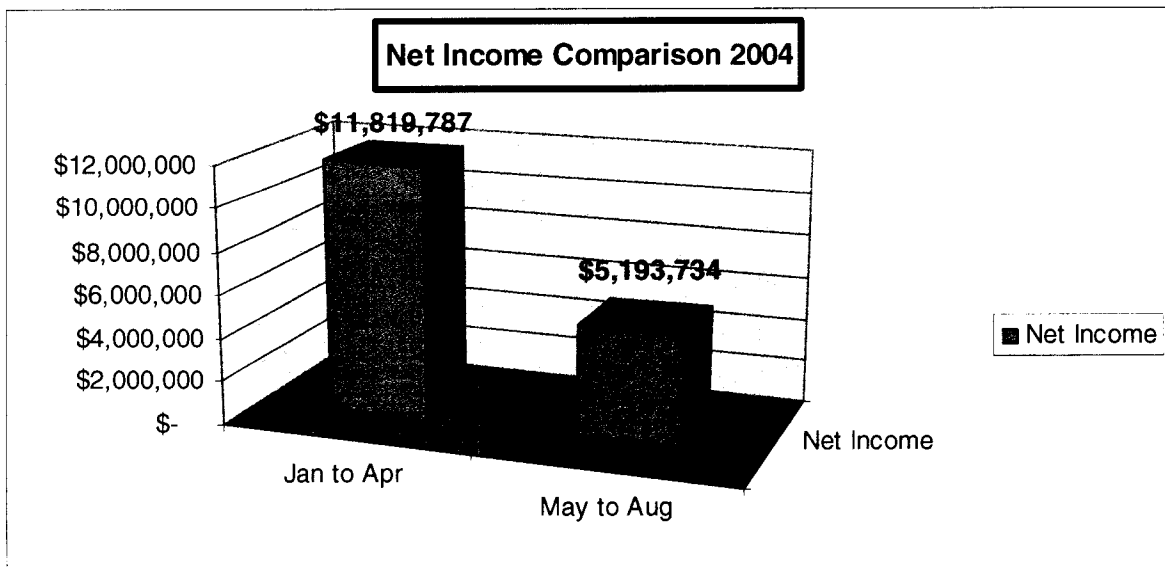


Figure 2.



Unfortunately, the impact was in actuality far greater than that represented within these two charts as the Tribe chose not to fire existing employees. Notably, our revenues remain

impacted as the games in operation at the Victoryland Racetrack continue to possess the very same features that the Tribe was forced by the NIGC to abandon.²

Our most recent challenge came late last year when the Birmingham Race Course began operating a sweepstakes promotion utilizing electronic machines. This promotion was found lawful under Alabama law earlier this year.³ The court's determination that this electronic sweepstakes promotion is lawful under Alabama law was based on two key findings. First, the court found that the promotion lacked consideration. While consideration was paid in exchange for internet time, the court found that none was paid for the sweepstakes entries. Second, the court found that "neither the Sweepstakes nor the individual components thereof fit the current definition of illegal 'gambling' or 'gambling devices'" found in Alabama law.

To the contrary, the court determined that "the outcomes of the Sweepstakes entries are predetermined before they are given to the purchasers of Internet time. After the purchase, there is no contest of chance or future contingent event impacting whether the customer wins or loses." The Readers are merely displaying these predetermined outcomes, and thus, are "dumb terminals." Lacking both consideration and chance, the electronic sweepstakes promotion was found to fall within "a loophole in the patchwork of Alabama's anti-gambling laws." Unfortunately, these sweepstakes games are now spreading throughout the state, further impacting our ability to remain competitive.

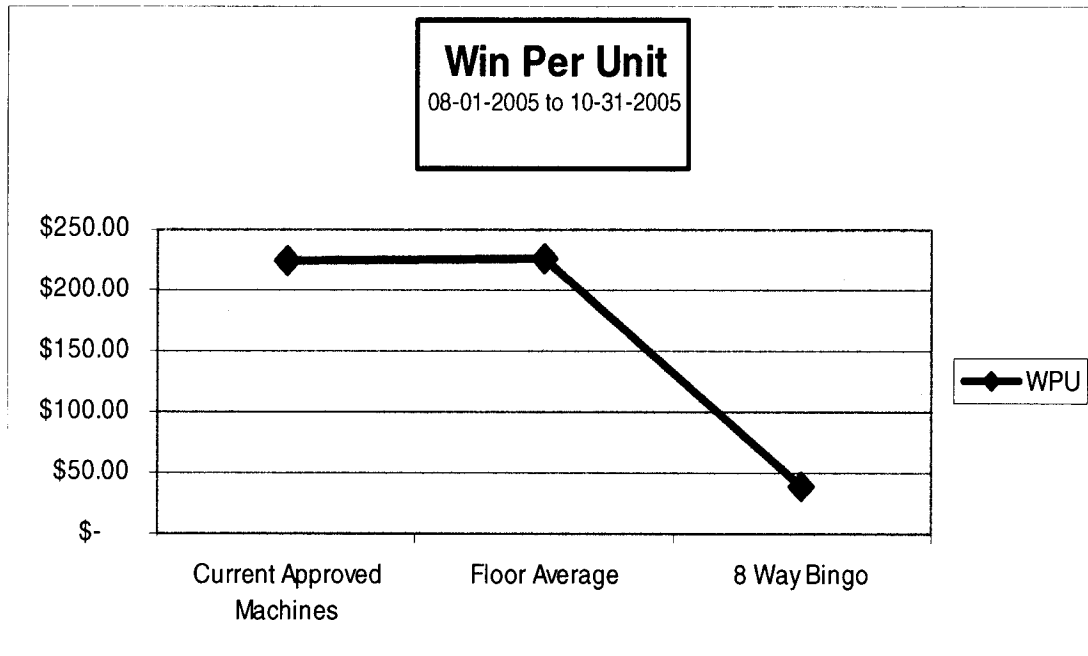
If finalized, the Proposed Rules would limit the Tribe to even slower-playing and less entertaining games than we currently operate while non-Indian gaming operations in Alabama will remain unaffected. Thus, for example, the proposal would require the Tribe to operate games such as "Eight Way Bingo," a game currently operated by the Tribe that is perhaps the closest to meeting the requirements of the Proposed Rules. This game has a very low entertainment value compared to other existing class II games, and quite frankly, customers generally do not like to play it. As depicted by Figure 3, this is evidenced by a Win Per Unit (WPU) of \$39 from 08-01-05 to 10-31-05 for Eight Way Bingo, compared to an overall average WPU of \$223.

The average dollars wagered on Eight Way Bingo exhibit a similar pattern. The floor average for this game is just over \$1,100, compared to an overall floor average of \$3,100. Based on these figures, the Proposed Rules could immediately impact the revenues of our Atmore facility by up to 80%. This negative impact will only increase as the casinos on the gulf coast impacted by last year's hurricanes resume operation. With competition in central Alabama continuing to expand uninhibited, the Tribe's facilities in Montgomery could no longer remain competitive and would be forced to close.

² The electronic bingo games operated at the Victoryland Racetrack are to be operated in accordance with regulations enacted by the Sheriff of Macon County, a copy of which is attached.

³ See *Jefferson County Racing Assoc., Inc. v. Hale*, Civil Action No. CV 05-7684 JSV (Jefferson County Circuit Court Jan. 31, 2006). While operation of the sweepstakes promotion was temporarily halted during litigation, the operation reopened on February 16, 2006, with 1,320 video card machines. William C. Singleton III, *Sweepstakes to Reopen Today McGregor Says Machines Tested, Ready to Go*, The Birmingham News, Feb. 16, 2006, at 1B.

Figure 3.



The proposal's long-term impact on the Tribe and on the non-tribal residents of Alabama would be devastating. Not only would the proposal eliminate critical revenue streams for social, medical and educational programs for the Tribe, but the loss of hundreds of jobs in predominately lower-income areas of rural Alabama would have deep, long-lasting impacts throughout the state. Many would be forced to leave home due to an inability to maintain meaningful local employment, further impacting family and social structures. The Tribe's business partners and vendors in surrounding rural communities would also be seriously impacted. Depriving the Tribe of its primary source of income and sustenance runs counter to Congress' stated policy in the enactment of IGRA of promoting tribal self-determination.

SPECIFIC OBJECTIONS TO THE PROPOSED RULES

1. **Allowance Must be Made for Tribes in States with More Lenient Gaming Laws**

The Tribe believes strongly that consideration should be given to those isolated tribes who find themselves in a situation such as ours, with a Governor who refuses to follow the directives of IGRA and negotiate a Tribal-State Compact, yet permits the scope of gaming to flourish within the state. As discussed earlier, without such consideration, we face economic ruin upon finalization of the Proposed Rules. To avoid this negative impact, tribes such as ours should be permitted the opportunity to comply with either the standards set forth within the Proposed Rules or the scope of games permitted within the state. Consequently, the Tribe recommends that §546.9(a) of the Proposed Rules be revised as follows:

§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?

- (a) Except as provided in subsection (1), An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.

- (1) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, must submit these games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part. A requesting party wishing to meet state requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the state requirements. Such requests shall follow the same procedural requirements as outlined in this part.

To further clarify the intent behind this provision, the Tribe also recommends the following changes:

§ 546.1 What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (IGRA or “Act”). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, an “other game similar to bingo,” or a game of pull-tabs or “instant bingo,” meets the statutory requirements when these games are played primarily through an “electronic, computer or other technologic aid.” This part also establishes a process for establishing Class II certification of “electronic, computer, or other technologic aids” and the games they facilitate. This part further addresses those unique situations where these games and associated “electronic, computer, or other technologic aids” are intended to be certified

for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part. These standards for classification are intended to ensure that Class II gaming using “electronic, computer, or other technologic aids” can be distinguished from forms of Class III gaming that employ “electronic or electromechanical facsimiles” of a game of chance or slot machines.

§ 546.4 What are the criteria for meeting the first statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(I), that the game of bingo, lotto, or other games similar to bingo be “played for prizes, including monetary prizes, with cards bearing numbers or other designations?”

...

(p) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.5 What are the criteria for meeting the second statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(II), that bingo, lotto, or other games similar to bingo be one “in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?”

...

(o) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.6 What are the criteria for meeting the third statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(III), that bingo, lotto, or other games similar to bingo be “won by the first person covering a previously designated arrangement of numbers or designations on such cards?”

...

- (p) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.7 What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an “electronic or electromechanical facsimile?”

...

- (l) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

2. The NIGC Should Acknowledge Pending Requests for Secretarial Procedures

If the NIGC elects not to implement the option presented above, the Tribe requests that the NIGC incorporate language that would permit us to continue to operate existing games until such time as our request for secretarial procedures is finalized. To this end, we recommend the following language:

§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?

- (g) Secretarial Procedures. Notwithstanding any other requirements, tribes that have a request pending before the Secretary of the Department of the Interior for secretarial procedures as provided for in 25 CFR Part 291, and that satisfy the requirements of 25 CFR §291.3, may elect to continue operating existing games and delay compliance with the requirements of this part pending the final outcome of that request.

3. The NIGC Should Not Prohibit Game Features Permitted to Others Within the State

A. Auto-Daub

Auto-daub is a permitted feature within a game of bingo in the State of Alabama. Victoryland Dog Track, which is located in Shorter, Alabama, currently operates approximately 3,500 electronic bingo machines that lawfully employ auto-daub. Still, the NIGC has prevented our Tribe from using this same feature – an action that has already greatly impacted our revenues. Because the use of auto-daub is permissible within our state, the Tribe should be able to utilize games that incorporate this feature, and must be able to do so in order to remain competitive.

As an initial matter, it should be noted that both the courts and the NIGC have evaluated the manner in which players cover the numbers on their bingo card and have addressed several issues relevant to the same. The first of these is whether a player actually *covers* numbers on their card when they request an electronic player station to cover the numbers on their behalf. Traditionally, a player of paper bingo would separately locate each number drawn and then place a marker on, or otherwise physically mark, each matching number on their card(s). Players of electronic bingo games, however, typically mark their card(s) by either pressing a button on the console or by touching the display itself.

In dismissing the argument that MegaMania failed to satisfy the definition of bingo because of its electronic daub feature, the court stated that “[t]here is nothing in IGRA. . . that requires a player to independently locate each called number on each of the player’s cards and manually ‘cover’ each number independently and separately.”⁴ To the contrary, the court emphasized that IGRA “merely require[s] that a player cover the numbers without specifying how they must be covered.”⁵

The NIGC added in a recent game classification opinion that “[c]onsistent with the view that the game may be played in electronic format on a video screen and that ‘bingo paper’ is not required, the act of electronically daubing . . . is a logical substitute for marking a bingo paper card.”⁶ As such, both the courts and the NIGC have found electronic daubing acceptable,⁷ and it remains so within the Proposed Rules.⁸

Taking this analysis one step further, the term “auto-daub” has been used to refer to a family of features that aid players of an electronic bingo game in covering numbers on their

⁴ *United States v. 103 Electronic Gambling Devices*, 1998 WL 827586, at *6 (N.D. Cal. Nov. 23, 1998), *aff’d* 223 F.3d 1091 (9th Cir. 2000).

⁵ *Id.*

⁶ *Mystery Bingo* at 10.

⁷ See also *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000); *Reel Time Bingo Game Classification Opinion*, National Indian Gaming Commission, September 23, 2003; *National Indian Bingo Game Classification Opinion*, National Indian Gaming Commission, November 14, 2000.

⁸ *Proposed Rules* at §546.5(f).

cards. While similar in the type of assistance provided, the manner in which auto-daub operates may vary from game to game. In one version, the player must manually elect this assistance during each game. In other versions, auto-daub is the default and it assists the player without additional action – this is the case in Alabama. When activated, auto-daub aids the player by daubing at the appropriate time during the game’s natural progression. It cannot play independent of the player, nor does it change the game’s character or outcome.

When covering numbers on their card using an aid such as auto-daub, players are in essence utilizing assistance similar to that offered by reader/dauber devices commonly known as “bingo minders.” Bingo minders, which pre-date IGRA and are used widely in both tribal and non-tribal gaming facilities, monitor the game’s progression and automatically cover all matching numbers on each of the player’s cards. Essentially, each player enters their bingo cards into the minder, typically through the use of an identification number, and once game play begins, the bingo minder monitors the game’s progression and covers matching numbers on each of the player’s cards, often with no additional interaction by the player. The aid is programmed to locate and display the player’s best card, and to alert the player through a series of beeps of any winning pattern. If a winning pattern is achieved, the aid prompts the player to claim within a designated claim period. If a player fails to claim, the prize is forfeited and the game continues.

Incorporating the benefits of a reader/dauber device into another class II game is merely the natural progression of advancing technology, as well as the natural progression of daubing through means of an electronic player station. Auto-daub does not eliminate the statutory requirement that the holder of a card cover numbers when they are drawn. The game’s sequencing remains intact because the player, through the use of an aid, does not perform the daub function until *after* each release of balls. Furthermore, as technology has progressed, the NIGC has acknowledged that there is no requirement of a “manual” component in a game of bingo.⁹ With or without an aid that assists a player in covering numbers on their card, it remains true that “the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.”¹⁰

Nonetheless, the NIGC now seeks to prohibit this type of assistance.¹¹ Nothing in IGRA or judicial interpretations of IGRA prevents a game of bingo from employing a feature that assists a player in daubing. To the contrary, IGRA expressly authorizes the use of technologic aids in the play of a class II game and federal courts have repeatedly recognized that the manner in which a player “covers” numbers is irrelevant. The statutory requirements of bingo are satisfied so long as numbers *are* covered when similarly numbered objects are drawn or electronically determined. Moreover, because the use of auto-daub is authorized within the state,

⁹ 67 Fed. Reg. 41,166, 41,171 (June 17, 2002).

¹⁰ 25 U.S.C. §2703(7)(A)(i)(II) (2001).

¹¹ *Proposed Rule* at §546.5(e) (“To “cover,” a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station at least one time in each round after a set of numbers or other designations is released.” *See also Proposed Rule* at §546.5(g) (“Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.”)

the Tribe believes that it too has a clear right to operate class II games that employ this feature within its gaming facilities. Accordingly, the Tribe objects to the NIGC's prohibition of this type of a technologic aid and respectfully requests that the following changes be made to the Proposed Rule.

i. §546.5(e) must be deleted as follows:

~~(e) — To “cover,” a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station at least one time in each round after a set of numbers or other designations is released.~~

ii. §546.5(f) must be modified to read as follows:

(f) Players must have an opportunity to cover (daub) after every release. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. All numbers or designations on a player's card that have been properly covered (daubed) must be so indicated on the video screen at that player station by some readily apparent visible characteristic, such as by being displayed in a different color or marked by a strike-out through the space.

iii. §546.5(g) must be deleted as follows:

~~(g) — Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.~~

iv. §546.5(h) must be modified to read as follows:

(h) All players in a game, and not just a winning player, must be required by the rules of the game to have an opportunity to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.

B. Unnecessary Game Delays

Also worth particular note are the provisions of the Proposed Rules that add unnecessary delays to the play of the game. Section 546.6(c) of the Proposed Rules, for example, provides in part that:

“To establish the game as a contest in which players play against one another the game must provide for two or more the [sic] releases of selected numbers or other designations. Each release will provide one or more numbers or other designations randomly selected or electronically determined. Each release must take a minimum of two (2) seconds. Numbers or other designations must be released one at a time.”

Furthermore, §546.5(i) provides:

“A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player’s card, but, in any event may not proceed in less than two (2) seconds.”

As a consequence, in order for a game of bingo to be a class II game under the Proposed Rules, it must require: 1) two or more releases of balls; 2) that each ball release take a minimum of two seconds; 3) that each number within a release be released individually; and 4) it must incorporate a two second delay for daubing regardless of whether such a delay is needed. Extending the amount of time required to play a game has a drastic effect upon its profitability. Because the games utilized by our competitors are not required to include such delays, the following changes must be made to the Proposed Rule to improve the Tribe’s ability to compete.

i. §546.5(i) must be modified to read as follows:

(i) A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player’s card, but the game may proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards.

ii. §546.6(a) must be modified to read as follows:

(a) Because the game must be won by the “first person,” each game must be played by multiple players. Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players. The system must be designed to provide reasonable opportunity for more than two players to participate in each common game.

iii. §546.6(c) must be modified to read as follows:

(c) To establish the game as a contest in which players play against one another the game must provide for two or more releases of selected numbers or other designations. Each release will provide one or more number(s) or other designation(s) randomly selected or electronically determined. The numbers or other designations must be used in the sequence in which they are drawn. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and claimed. After the game-winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).

4. The NIGC Should Not Modify its Definition of Electronic or Electromechanical Facsimile

Since the enactment of IGRA, federal courts have addressed and clarified the distinctions between class II technological aids and class III facsimiles; clarifications that are properly reflected in the NIGC’s 2002 definition regulations. Given the clarity brought by these definitions, the Tribe was disappointed to see that the NIGC is now proposing to amend them. With regard to the facsimile definition in particular, the proposed amendment not only abandons this clarity, but moves the industry back in time.

The preamble to the 2002 rulemaking explains that Congress intended that bingo, lotto, and games similar to bingo may be played in an electronic format, “even a *wholly* electronic format, provided that multiple players are playing with or against each other. ... A manual component to the game is not necessary.”¹² “What IGRA does not allow,” it continues, “is a wholly electronic version of the game that does not broaden participation, but instead permits a player to play alone with or against a machine rather than with or against other players.”¹³

¹² 67 Fed. Reg. 41,166, 41,171 (June 17, 2002).

¹³ *Id.*

We disagree with the NIGC's current claim that as defined, facsimiles are seemingly permitted as a class II game. Such an assertion distorts the plain meaning of the definition as well as the intent behind its enactment. The definition is clear on its face that so long as the electronic format allows "multiple players to play with or against each other rather than with or against a machine," such games are *not* facsimiles.¹⁴ In other words, so long as the electronic format – even a *wholly* electronic format – does not permit a player to play alone against a machine, the game *is* bingo and *not* a facsimile of bingo. The fundamental characteristics of the game are preserved, unaltered by the game's electronic format.¹⁵

The proposed definition, however, does away with this distinction and provides that *any* wholly-electronic game – even bingo – is a facsimile, and therefore, class III. The only way in which class II games can retain their status is to include a manual element, such as a mechanical ball draw or a tangible card – a potentially devastating reversal of the status quo. The carve-out contained within subsection (c) does little to rectify this impact given the arbitrary restraints contained elsewhere within the regulation. To begin with the assumption that *all* wholly electronic games are facsimiles, and thus class III, is an extremely damaging way in which to proceed and marks a drastic change from existing regulations that begin with the assumption that games are class II unless transformed into class III gaming.

The Tribe therefore opposes any change to the definition of "electronic or electromechanical facsimile." Alternatively, the Tribe proposes the following language to perhaps more clearly express the interplay between class II technologic aids and class III facsimiles:

“§502.8 Electronic or electromechanical facsimile.

- “(a) An electronic or electromechanical facsimile of a game of bingo, lotto, and other games similar to bingo means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game and that fails to allow players to play with or against each other rather than with or against a machine.
- “(b) An electronic or electromechanical facsimile of a game other than bingo, lotto, and other games similar to bingo means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game.”

¹⁴ 25 CFR §502.8.

¹⁵ *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713, 725 (10th Cir. 2000).

The Tribe respectfully requests that the electromechanical facsimile definition remain unchanged, or at the very least, that the revision more appropriately reflect the intent of Congress and the courts.

5. The NIGC Should Not Modify its Definition of Games Similar to Bingo

We also object to the NIGC's efforts to redefine "games similar to bingo" in a way that encompasses many games that are currently "bingo." While it is true that games similar to bingo remain class II, these games may only be played in locations where "bingo" is played. By improperly shifting games of bingo into the category of games similar to bingo, the NIGC is further confining our options, and thus, the viability of class II gaming.

By way of history, this term was first defined by the NIGC in 1992 as "any game that meets the requirements for bingo under §502.3(a) of this part and that is not a house banking game under §502.11 of this part."¹⁶ Thus, as originally defined, for a game to be a game similar to bingo, it had to satisfy all the requirements of bingo, *plus* not be house banked as defined by the NIGC. In other words, it had to be *more* than bingo.

During the 2002 rulemaking, the NIGC reexamined this definition. The following discussion within the preamble to the Final Rule is particularly instructive:

"The Commission now believes that its 1992 definition of 'game similar to bingo' is flawed. It defies logic to conclude that the Congress intended to require that these other 'similar' games satisfy the same statutory requirements of bingo. If this were Congress' intent, there would have been no need for the phrase 'and other games similar to bingo.' These games would not in effect be 'similar' to bingo; they *would* be bingo."¹⁷

"The definition announced today corrects this flaw by accurately stating that 'other games similar to bingo' constitute a 'variant' on the game and do not necessarily meet each of the elements specified in the statutory definition of bingo. The Commission believes that this modification more accurately reflects Congress' intent with regard to games similar to bingo."¹⁸

Within the preamble to the 2002 rulemaking, the NIGC also discussed their intent behind the phrase "variant on the game of bingo."

¹⁶ 57 Fed. Reg. 12,387 (April 9, 1992).

¹⁷ 67 Fed. Reg. 41,166, 41,171 (June 17, 2002) *internal cites omitted*.

¹⁸ *Id.*

“It is particularly noteworthy that the statutory listing of specific games followed by the phrase, ‘and other games similar to bingo,’ can be read in two ways. First, it can be interpreted to mean merely that the specified games are similar to bingo. The Commission finds this interpretation unlikely. Alternatively, this language can also be interpreted to leave class II open to other games that are bingo-like, but that do not fit the precise statutory definition of bingo. This second reading, that the class was left open to a group of non-specific, bingo-like games, or ‘variants’ on the game of bingo, is consistent with legislative history and the holdings of the Courts of Appeals for the Ninth and Tenth Circuits in their analysis of the game *Megamania* cited above.”¹⁹

Thus, the revised definition permits class II gaming to evolve with changing technology, and furthers Congress’ intent that tribes be permitted “maximum flexibility” in utilizing advancements in class II gaming. Congress intended games similar to bingo to encompass a broader range of games than those satisfying the three specific requirements of bingo; an intention that was properly captured by the NIGC in 2002. The NIGC should avoid reversing this position in its current rulemaking.

To illustrate the manner in which the Proposed Rules would shift existing bingo games into the category of games similar to bingo, one need only look to the NIGC’s opinion issued for *Wild Ball Bingo*.²⁰ On March 27, 2001, the NIGC issued a game classification opinion for *Wild Ball Bingo*, wherein the game was found to be a class II game of bingo. In finding the game to be bingo rather than a game similar to bingo, the NIGC made the following observations regarding the game’s four-number bingo card.

“Non-traditional design

“Although the traditional bingo game may use a card with a grid containing more than four numbers, a minimum array is not specified in the IGRA definition. As the United States Court of Appeals for the Ninth Circuit noted in a recent decision on a similar game:

“Whatever a nostalgic inquiry into the vital characteristics of the game as it was played in our childhoods or hometowns might discover, IGRA’s three explicit criteria, we hold, constitute the sole legal requirements for a game to count as Class II bingo....

“Moreover, § 2703(7)(A)(i)’s definition of Class II bingo includes “other games similar to bingo,” § 2703(7)(A)(i), explicitly precluding any reliance on the exact attributes of the children’s pastime.

¹⁹ *Id.*

²⁰ *Wild Ball Bingo (Electronic Version) Game Classification Opinion*, National Indian Gaming Commission, March 27, 2001 (“*Wild Ball Bingo*”)(citations omitted) at 4.

“In light of this case and our own review of the statute and application of our regulations, the fact that the card contains only four numbers rather than a more extensive grid of numbers does not place the game outside the “bingo” definition found in IGRA.”²¹

This finding would be overturned by §546.4(c) of the Proposed Rules. Consequently, based on this provision alone, Wild Ball Bingo would be reclassified as a game similar to bingo.²² The intent that games similar to bingo encompass a broader range of games than those satisfying the three specific requirements of bingo most assuredly was meant to encompass distinctions broader than the number of squares on a bingo card, or the number of balls contained within the ball draw. These are truly distinctions without materiality and rather than broadening the permissible scope of games, serve only to limit bingo and games similar to bingo beyond what was intended. The Tribe requests that these immaterial distinctions between bingo and games similar to bingo be removed from the proposal. These two categories of games should be viewed as described in the preamble to the 2002 rulemaking.

6. The NIGC Should Not Reclassify All Existing Class II Games

Our primary objection to the Proposed Rules is that they will reclassify *all* games that the federal courts, tribal gaming commissions, and the NIGC itself have previously determined to be class II. None of the bingo or pull-tab games currently classified by the NIGC as class II will survive this rulemaking. Consequently, *all existing class II games will become class III, and thus require a Tribal-State Compact for their continued operation.* We find this outcome outrageous given that no intervening court action or congressional enactment justifies such a drastic transformation of the legal landscape.

One need only compare the current proposal with the NIGC’s latest game classification opinion to see how the Proposed Rules will reclassify all existing class II games. Just last year, the NIGC found the Nova gaming system to be a class II game under IGRA.²³ This game, however, will become a class III game if the Proposed Rules are finalized. One way in which the Proposed Rules overturn the NIGC’s earlier opinion deals with a player’s failure to mark a number on their bingo card.

In its review of the Nova gaming system, the NIGC found acceptable a game structure wherein patterns rather than numbers are slept.²⁴ The fact that one type of a pattern rather than another was involved, or whether the player was the first to obtain such pattern, was wholly

²¹ *Wild Ball Bingo* at 4.

²² Importantly, because Wild Ball Bingo also fails to satisfy a host of other new requirements found within the proposed rule, it would lose its class II status as a whole.

²³ See *Nova Gaming Bingo System*, National Indian Gaming Commission, April 4, 2005 (“*Nova Gaming*”).

²⁴ *Nova Gaming* at 11.

irrelevant to the NIGC's analysis. The Proposed Rules, however, reverse this position stating now that *numbers* rather than *patterns* must be slept in a class II game.²⁵ Even more, the proposal states that slept numbers comprising any pattern other than the game-winning pattern are forfeited, and can never be "caught-up." While numbers comprising the game-winning pattern may be "caught-up," this can only be done where that player is the first to obtain the game-winning pattern. Because the Nova system does not satisfy these newly created requirements, it would fail to maintain its current class II status.

Furthermore, the NIGC has never before required that the bingo display "fill at least ½ of the total space available for display,"²⁶ or that "[i]n no instance may the alternative display fill more than ½ of the total display space."²⁷ No mention has ever been made of restricting the bingo card such that each space contains "a unique number or other designation which may not appear twice on the same card."²⁸ Because nothing has changed in the last year to warrant these and the many other additional requirements found within the Proposed Rules, these provisions ought to be removed from the current proposal.

It is also not clear within the Proposed Rules as to when a player may exit a game. Specifically, it is unclear whether players can exit the game after they have completed their final action, or whether they must wait until *all* players have done so.

In the Nova Gaming game classification opinion, it was clear that while "[t]he last potential winner MUST daub and has an infinite period of time" in which to daub, players that slept the game winning pattern before this time were "released from the game" and then able to join another.²⁹ The Proposed Rules, however, address this feature at two separate places. First, section 546.5(k) states that "[i]f a player sleeps the game-winning pattern, the game must continue until a player subsequently obtains and covers (daubs) and claims the game-winning pattern." Next, section 546.5(m) states that "[a]fter all available numbers or designations that could lead to a game winning prize have been randomly drawn or electronically determined and released (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of time to complete the last required cover (daub) and claim of the prize, or it may be declared void and wagers returned to players and prizes canceled." Because the two sections, when read together, are unclear as to this critical game feature, we respectfully request that the Proposed Rules be clarified to model the standard expressed by the NIGC just last year.

Another feature not required last year was that the game "prominently display" that it is a game of bingo, as would be required by section 546.4(d) of the Proposed Rules. Without such a

²⁵ *Proposed Rule, National Indian Gaming Commission, "Classification Standards for Bingo, Lotto, Other Games Similar to Bingo, Pull Tabs and Instant Bingo as Class II Gaming When Played Through Electronic Medium Using 'Electronic, Computer or Other Technological Aids,'"* 71 Fed. Reg. 30238 (May 25, 2006)("Proposed Rule") at §546.5(j).

²⁶ *Proposed Rule* at §546.4(b).

²⁷ *Proposed Rule* at §546.4(o).

²⁸ *Proposed Rule* at §546.4(c).

²⁹ "The last potential winner MUST daub and has an infinite period of time to daub. Any previous potential winner that sleeps the game winning pattern is released from the game and may join another game." *Nova Gaming* at 13.

display, where each letter “must measure at least two (2) inches in height,” a game can no longer satisfy the requirements of a class II game. Because the NIGC has never before placed such a requirement on a class II game, no existing class II game satisfies this requirement. If these Proposed Rules are finalized, all existing class II games will again be instantly transformed into class III games.

The significance of this one provision, however, must be emphasized. This requirement alone fulfills the NIGC’s stated intent in enacting this regulation; that being to adequately distinguish a class II game from one that is class III. Requiring such a prominent display in and of itself achieves the desired result of distinguishing the two and alleviates any confusion among players as to whether the game is class II or class III. In the interest of simplicity and efficient rulemaking, the Tribe suggests that this one requirement be maintained, and *that all others be omitted from the proposal*. Doing so enables the NIGC to achieve its stated intent, while at the same time avoiding the placement of arbitrary limitations on the game of bingo such as those regarding prize amounts, game patterns, unnecessary game delays, and card sizes. This one change achieves the desired result with the least amount of impact, and thus is strongly supported by the Tribe.

While it may be simple to modify existing class II games to satisfy *some* of the new requirements found within the Proposed Rules, in other instances, modification will require a complete retooling of the game. All of our Tribe’s existing class II games will either have to be replaced or modified – options that will result in significant cost. To require such an action without the support of the courts or the legislature is simply unconscionable.

If the NIGC insists on moving forward with this rulemaking, all of the requirements discussed herein must be deleted from the regulation. Alternatively, a grandfather clause must be added that permits continued operation of games that include features previously found to be characteristic of a class II game. Games containing these grandfathered characteristics should not be required to satisfy the requirements of the Proposed Rules. At the very least, these sections must be modified as illustrated in the attached draft regulation. (For your benefit, both a clean copy and a red-lined copy are provided.) While not ideal, this draft represents a viable alternative that lessens the economic impact of the Proposed Rules on tribes such as the Poarch Band of Creek Indians.

7. The NIGC Should Avoid Restricting Pull-Tab Games

The Tribe also objects to the restrictions being placed upon pull-tab games. As with many of the other requirements contained within the Proposed Rules, many of those regarding pull-tabs have never before been required for a game to fall within the category of class II gaming. Our Tribe depends heavily on games that utilize these features and would suffer significant economic harm if they were prohibited.

Two sections in particular are especially problematic. Sections 546.7(g) and (i), when read together, prohibit the accumulation of credits and the dispensing of vouchers or receipts

representing winnings. Instead, players would be forced to redeem each individual winning pull-tab at an alternate location. Such a requirement runs counter to existing guidance and case law.

The NIGC has expressly permitted our Tribe to operate Diamond Game's Lucky Tab II Millennium dispensers ("Millennium"), a court sanctioned class II game.³⁰ Notably, Lucky Tab II allows players to build and play credits obtained from winning pull-tabs. The Proposed Rules, however, would ban the Millennium dispenser despite its current classification, and despite the fact that it utilizes pre-printed, paper pull-tabs that are read and dispensed to the player on each play. A feature that tracks winning amounts and dispenses such amounts in a single form clearly falls within the category of "aiding" the game of pull-tabs by providing a "cashier" function to the game. Furthermore, these requirements are also inconsistent with the provision pertaining to bingo games, which *are* permitted to build, play, and dispense credits.

Finally, it should be noted that security and MICS compliance is stronger where pull-tab dispensers permit winning tabs to be credited at the machine rather than requiring that each individual ticket be exchanged for cash. The latter requires significant handling of both cash and paper pull-tabs, not to mention the fact that excessive cash must also be maintained on the gaming floor at all times. Accounting for pull-tab dispensers that allow credits can all be done via normal drop procedures and accounting reports that fully, accurately, and securely comply with the MICS. For each of these reasons, the Tribe respectfully requests that sections 546.7(g) and (i) be removed from the Proposed Rules.

8. The Deadline for Compliance Must be Extended

The regulation's deadline for compliance must be extended. As currently proposed, existing operations such as ours will have only six months in which to come into compliance with the final rule. Given that upon finalization of the Proposed Rules, *all* class II games will be reclassified as class III, *all* games within our operations will either have to be replaced or reconfigured. Based upon discussions with vendors and manufacturers, we understand that it is likely to take at least a year for games that are compliant with the game classification standards to be developed. (This, of course, assumes that manufacturers chose to overlook the poor economic performance of these new games and more forward with their development.) Given the recent publication of the technical standards, manufacturers will now also have to ensure compliance with these standards as well. We believe six months to be an unrealistic deadline for the industry to come into compliance with a complete rewrite of existing guidance.

Perhaps more problematic is §546.10(e)(3) of the Proposed Rules, which states that any game placed into operation after the effective date of the final rule must satisfy the rule's classification requirements *before* being put into operation. Accordingly, any game that the Tribe sought to add after the effective date of the final rule would have to incorporate all of the requirements contained therein, including the newly required screen sizes, the proper labeling in two-inch letters, the appropriate time delays, common patterns, and modified prize structures.

³⁰ ADD CITE

This section further provides that if tribal certification is not provided within six months of the final rule's effective date, full compliance with the final rule – including lab and NIGC certification – will be required before new games may be placed into operation.

The Tribe believes this requirement to be wholly unfair as it is unlikely that compliant games will be developed within six months of the final rule's effective date. As a result, tribes will be forced to await full implementation of the regulation before games may be added to their operation. Given the start-up nature of this ambitious certification and approval program, it is likely to take upwards of 12 to 18 months for a game to receive NIGC approval. We find it wholly unacceptable that any tribe would be prohibited from adding any new class II games for this length of time. Consequently, the Tribe requests that the six month requirement contained within both §§546.10(e)(1) and (2) be extended to a more realistic 24 months. Further, §546.10(e)(3) should be deleted entirely from the regulation to prevent unnecessary financial harm to tribes during the transition period.

9. The Rules Should be Republished as Proposed Rules

Should the NIGC decide to move forward with this rulemaking, the Tribe encourages the Commission to once again publish both the Proposed Rules and the technical standards as proposed rules before consideration is given to their finalization. Any minor delay associated with doing so will permit both the industry and the NIGC to ensure that the least restrictive means are being utilized to accomplish the NIGC's stated goals in drafting these regulations.

Also worth noting is that within the preamble to the technical standards it is stated that the purpose behind their enactment is to protect the integrity of class II gaming – the very same reason for which the NIGC states these game classification regulations are needed. We feel strongly that enactment of both regulations is unnecessary. Because of the detrimental impact the Proposed Rules will have on Indian gaming, its enactment should be abandoned.

And finally, as the above examples illustrate, though couched as an agency rulemaking, the NIGC's current efforts would in effect be an amendment of IGRA. It is without doubt that the Proposed Rules place restrictions on the game of bingo not envisioned by Congress. If IGRA is to be amended at all, the proposal should be presented and debated as such. To do otherwise may be seen as an underhanded attempt to circumvent proper procedure, especially when considering that it is doubtful that the game described within the Proposed Rules can actually be played in a live setting. As a result, it appears as though the NIGC is not clarifying the game of bingo, but instead creating an entirely new game.

For all these reasons, we urge the NIGC to reconsider the content of the Proposed Rules and withdraw this current proposal. The courts have provided the appropriate legal contours for the classification of games under IGRA, and it is this framework that should be followed. Should the NIGC continue to feel obligated to move forward with this rulemaking effort, we respectfully request that the changes discussed above be incorporated into the Proposed Rules in an effort to lessen its devastating economic impacts. For your benefit, I am attaching both a

Poarch Band of Creek Indians

November 15, 2006

Page 23 of 23

clean copy and a red-lined copy of our recommendations. On behalf of the Poarch Band of Creek Indians, I thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Buford L. Rolin". The signature is fluid and cursive, with the first name "Buford" being more prominent and the last name "Rolin" following in a similar style.

Buford L. Rolin, Chairman
Poarch Band of Creek Indians

Attachments

cc: Members of the Senate Committee on Indian Affairs
Members of the House Resources Committee
National Indian Gaming Association

ATTACHMENT I

RECOMMENDED CHANGES OF THE POARCH CREEK INDIANS TO THE NIGC’S PROPOSED RULE

CLEAN COPY

§ 546.1 What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (IGRA or “Act”). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, an “other game similar to bingo,” or a game of pull-tabs or “instant bingo,” meets the statutory requirements when these games are played primarily through an “electronic, computer or other technologic aid.” This part also establishes a process for establishing Class II certification of “electronic, computer, or other technologic aids” and the games they facilitate. This part further addresses those unique situations where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part. These standards for classification are intended to ensure that Class II gaming using “electronic, computer, or other technologic aids” can be distinguished from forms of Class III gaming that employ “electronic or electromechanical facsimiles” of a game of chance or slot machines.

...

§ 546.4 What are the criteria for meeting the first statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(I), that the game of bingo, lotto, or other games similar to bingo be “played for prizes, including monetary prizes, with cards bearing numbers or other designations?”

- (a) Each player in the game must play with one or more cards. Electronic cards are permissible.
- (b) For a game of bingo, each player in the game must obtain the card or cards to be used by that player in the game before numbers or other designations for the game are randomly drawn or electronically determined. Players cannot change cards once play of a particular bingo game has commenced.
- (c) The electronic card in use by a player must be displayed prominently on a video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play, except when multiple electronic cards are used. When multiple electronic cards are used by a player, the player must be capable of independently seeing each one of his or her cards, and when so independently viewing each one of his or her cards, the electronic

card must be displayed prominently on a video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play. At the conclusion of the game, each player must see his or her card with the highest value prize or, if no prize was won, the card closest to a bingo win.

- (d) For a game of bingo, each space must contain a unique number or other designation which may not appear twice on the same card. The card may contain one “free space” without a specified number or other designation, provided the free space is in the same location on every card in play or available to be played in the game.
- (e) Each electronic player station shall prominently display the following message as applicable: “THIS IS A GAME OF BINGO” or “THIS IS A GAME SIMILAR TO BINGO.”
- (f) For an other game similar to bingo, each card must contain at least three (3) spaces. Each space must contain a unique number or other designation which may not appear twice on the same card. One space may be designated a “free space” provided the card has at least three (3) other spaces.
- (g) When a number or other designation is covered, the covering must be indicated on the card by a change in the color of the space, a strike-out through the space, or some other readily apparent visual means.
- (h) All prizes in the game, except for progressive prizes, must be fixed in amount or established by formula and disclosed to all players in the game. Random or unpredictable prizes are not permitted.
- (i) Other patterns may be designated for the award of bonus prizes in addition to the prize to be awarded based on the game-winning pattern. Each such designated pattern or arrangement must be disclosed to the players upon request before the game begins.
- (j) The designated winning patterns and the prizes available must be explained in the rules of the game, which must be made available to the players upon request before the game begins.
- (k) Each game must have a winning player and a game-winning prize must be awarded in every game. If the first player, or a subsequent player obtaining the game-winning prize pattern sleeps that pattern, the game must continue until a player successfully achieves the game-winning pattern. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game.

- (l) A bonus prize in a game that is designated as an “interim prize” must be awarded in a random draw or electronic determination and release of numbers or other designations that is no more than the exact quantity of numbers or designations that are needed for the game-winning player to achieve the game-winning pattern.
- (m) A bonus prize in a game that is designated as a “consolation prize” may be awarded after the game-winning pattern is achieved and claimed by a player but only after a subsequent release of randomly drawn or electronically determined numbers or other designations has been made.
- (n) A progressive prize may be awarded only if the game also provides a game-winning prize as described elsewhere in this Part.
- (o) All prizes in a game, including progressive prizes, must be awarded based on the outcome of the game of bingo, lotto, or other game similar to bingo and may not be based on events outside the selection and covering of numbers or other designations used to determine the winner in the game. The prize structure must not rely on an additional element of chance other than the play of bingo, lotto, or an other game similar to bingo.
- (p) A player station may offer an alternative display of the results of the game in addition to the display of the game results on the electronic bingo card, provided that the player has the option to play using only the electronic card display. An alternative display may include game theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels.
- (q) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.5 What are the criteria for meeting the second statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(II), that bingo, lotto, or other games similar to bingo be one “in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?”

- (a) The numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool of numbers or other designations. Each game must permit the random draw and release or electronic determination of all numbers or designations in the pool. A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.

- (b) All numbers or other designations must be used in the sequence in which they are drawn.
- (c) For a game of bingo, all numbers or other designations used in the game must be randomly drawn or electronically determined after the cards to be used in the game have been assigned to or selected by the players in the game. The cards cannot have pre-covered numbers or other designations.
- (d) For a game of bingo, the numbers or other designations randomly drawn or electronically determined must be used in real time and not stored for later use.
- (e) All numbers or other designations must be covered (daubed) when similarly numbered objects are drawn or electronically determined.
- (f) Players must have an opportunity to cover (daub) after every release. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. All numbers or designations on a player's card that have been properly covered (daubed) must be so indicated on the video screen at that player station by some readily apparent visible characteristic, such as by being displayed in a different color or marked by a strike-out through the space.
- (g) All players in a game, and not just a winning player, must be required by the rules of the game to have an opportunity to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.
- (h) A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player's card, but the game may proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards.
- (i) Players must cover after a release of numbers or other designations to win the prize associated with any winning pattern obtained in that release. If a player "sleeps," i.e., fails to cover after a release of numbers or other designations, that player cannot be awarded a prize based on a winning pattern obtained in that release. Such player, however, may cover the slept number(s) or other designations in a subsequent release ("catch-up") and win the prize associated with any winning pattern obtained in that subsequent release. A prize associated with a previously slept pattern may only be won upon a subsequent release of

numbers or other designations and a successful covering of the numbers or other designations in that release.

- (j) If a player sleeps the game-winning pattern, the game must continue until a player subsequently obtains and covers (daubs) and claims the game-winning pattern.
- (k) All numbers or other designations slept by a player must be clearly and uniquely identified as such by displaying them in a unique color, by drawing a strikeout through them, or by other readily visible means. A player who sleeps a winning pattern must be notified by visible message on the video screen that the pattern was slept. Players who fail to cover (daub) numbers or other designations that establish patterns yielding bonus or progressive prizes also must be notified by visible message on the video screen that the pattern was slept.
- (l) After all available numbers or designations that could lead to a game winning prize have been randomly drawn or electronically determined and released (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of time to complete the last required cover (daub) and claim of the prize, or the game may be declared void and wagers returned to players and prizes canceled.
- (m) The gaming facility or its employees may not play as a substitute for a player.
- (n) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.6 What are the criteria for meeting the third statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(III), that bingo, lotto, or other games similar to bingo be “won by the first person covering a previously designated arrangement of numbers or designations on such cards?”

- (a) Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players. The system must be designed to provide an opportunity for more than two players to participate in each common game.
- (b) A game may offer players the opportunity to play at different entry wagers, and the prizes in the game may be increased, or a progressive prize offered, based on a higher entry wager.

- (c) To establish the game as a contest in which players play against one another, the game must provide for two or more releases of selected numbers or other designations. Each release must provide one or more number(s) or other designation(s) randomly selected or electronically determined. The numbers or other designations must be used in the sequence in which they are drawn. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and claimed. After the game-winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).
- (d) During the first release, the maximum amount of numbers or other designations to be revealed is one less than the number required for a game winning pattern.
- (e) Each game must have one game-winning pattern or arrangement, which may be won by multiple players simultaneously. Each game-winning pattern or arrangement must consist of at least two (2) spaces, not counting any free spaces used. The game-winning pattern or arrangement must be available to players before the game begins.
- (f) Other patterns or arrangements consisting of at least two (2) spaces each, not counting free spaces, may be used for the award of bonus or progressive prizes, if the patterns or arrangements are designated and made available to players before the game begins.
- (g) Events outside the play of bingo, lotto or an other game similar to bingo may not be used to determine the eligibility for a prize award or the value of a prize.
- (h) The set of selected numbers or other designations in the first release may not contain all of the numbers or other designations necessary to form the game-winning pattern on a card in play in the game. The set may contain the numbers or other designations necessary to form other winning patterns for bonus or progressive prizes. The quantity of numbers or other designations in the second or subsequent release may not extend beyond the quantity of numbers or other designations necessary to form the first available game-winning pattern on a card in play in the game. There may be additional releases to allow for additional bonus prizes.
- (i) Prizes cannot be claimed following the first release of numbers or other designations. Two or more releases are required before a player can claim any prize in any game.
- (j) Bonus or progressive prizes may be awarded based on pre-designated patterns provided the award of these prizes is based on the play of bingo, lotto or an other game similar to bingo in the same manner as for the game-winning prize. Bonus or progressive prizes may be based on different pre-designated and pre-announced

patterns, on achieving a winning pattern in a specified quantity of numbers or other designations drawn or electronically determined and released, on the order in which numbers or other designations are drawn or electronically determined and released, or on a combination of these criteria. Bonus or progressive prizes may be awarded as interim prizes, before or as the game-winning prize is awarded, or as consolation prizes after the game winning prize is awarded.

- (k) An “ante-up” format, in which a player is required to wager before each release as a condition of remaining in the game, is permissible, provided the game maintains at least two players. If only one player remains after one or more releases, that player will be declared the winner of the game-winning prize, and the game will end, provided that player obtains and covers (daubs) the game-winning pattern. If all players leave the game before a game-winning pattern is obtained and covered (daubed) by a player, the game will be declared void and wagers returned to players.
- (l) The use of a payable is permitted. The order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated winning pattern in a game. A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.
- (m) A game-winning prize must be awarded in every game. If the first player or a subsequent player obtaining the pre-designated game-winning prize pattern sleeps that pattern, the game must continue until a player achieves the game-winning pattern.
- (n) Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used to independently determine a winner of the game or the prizes awarded or change the results of the game in any way.
- (o) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.7 What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an “electronic or electromechanical facsimile?”

- (a) Hereafter, the term “pull tabs” also includes the term “instant bingo.” A pull-tab must be distributed to the player at the time the pull-tab is purchased. The pull-tab presented to the player must contain the information necessary for the player

to determine if that player has won a prize in the game. The information must be presented to the player in a readable format.

- (b) A pull-tab card may contain more than one arrangement of numbers or symbols, but each arrangement must comport with the requirements of this section. The player must pay for all of the arrangements on that pull-tab card in advance of its being dispensed.
- (c) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a “technologic aid” that assists in the sale. The “technologic aid” may also read and display the contents of the pull-tab as it is distributed to the player. The results of the pull-tab may be shown on a video screen that is part of or adjacent to the technologic aid assisting in the sale of the pull-tab.
- (d) The player may also purchase a pull-tab from a person or from a vending unit and place the pull-tab in a separate “technologic aid” that reads and displays the contents of the pull-tab.
- (e) If pull-tabs contain multiple arrangements of numbers or numbers or symbols, the rules for game play must indicate the disposition of a pull-tab in a technologic aid that is only partially played, i.e. all arrangements have not been viewed in the technologic aid.
- (f) A “technologic aid” may also show pull-tab results on a video screen using alternative displays, including game- theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. Options for players found in this alternative display may not determine a winner of the game or the prizes awarded or change the results of the pull-tab game in any way.
- (g) For technologic aids that are larger than the pull-tab, the machine shall prominently display the following message: “THIS IS THE GAME OF PULLTABS.”
- (h) The winning results on the pull-tab shall be no smaller than an 8 point font.
- (i) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.8 When is a pull tab or instant bingo game an “electronic or electromechanical facsimile?”

- (a) A pull tab game is an “electronic facsimile” if the pull tab does not exist at the point of sale.
- (b) Pull-tabs that exist in a tangible medium but that are electronically or optically read and transformed into an electronic medium and made available to the player only as depictions on a video screen (and not presented directly to the player in the tangible medium) are “electronic facsimiles” where they allow the player to play alone against the machine rather than with or against other players.

§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?

- (a) Except as provided in subsection (1), an Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.
- (1) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, must submit these games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part. A requesting party wishing to meet state requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the state requirements. Such requests shall follow the same procedural requirements as outlined in this part.
- ...
- (g) *Secretarial Procedures.* Notwithstanding any other requirements, tribes that have a request pending before the Secretary of the Department of the Interior for

secretarial procedures as provided for in 25 CFR Part 291, and that satisfy the requirements of 25 CFR §291.3, may elect to continue operating existing games and delay compliance with the requirements of this part pending the final outcome of that request.

§ 546.10 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that “electronic, computer, or other technologic aids” in play in Class II tribal gaming facilities meet the classification standards of this part?

...

- (e) Effective date for operation of games under the classification standards.
- (1) For Class II gaming operations open on the effective date of this part or that open within twenty-four months of the effective date, certification of the “electronic, computer, or other technologic aids” must be completed and authorization provided by the tribal gaming regulatory authority within twenty-four months of the effective date. Games and associated equipment not certified within that period must be removed until certification is obtained and authorization given. The Commission Chairman may extend the period for obtaining certification for one or more periods of six months at the request of a tribal gaming regulatory authority based on good cause shown.
- (2) For Class II gaming operations opening twenty-four months after the effective date, certification and authorization to operate by the tribal gaming regulatory authority must be completed before opening.

ATTACHMENT II

RECOMMENDED CHANGES OF THE POARCH CREEK INDIANS TO THE NIGC'S PROPOSED RULE

RED-LINED VERSION

§ 546.1 What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (IGRA or "Act"). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, an "other game similar to bingo," or a game of pull-tabs or "instant bingo," meets the statutory requirements when these games are played primarily through an "electronic, computer or other technologic aid." This part also establishes a process for establishing Class II certification of "electronic, computer, or other technologic aids" and the games they facilitate. This part further addresses those unique situations where these games and associated "electronic, computer, or other technologic aids" are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part. These standards for classification are intended to ensure that Class II gaming using "electronic, computer, or other technologic aids" can be distinguished from forms of Class III gaming that employ "electronic or electromechanical facsimiles" of a game of chance or slot machines.

...

§ 546.4 What are the criteria for meeting the first statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(I), that the game of bingo, lotto, or other games similar to bingo be "played for prizes, including monetary prizes, with cards bearing numbers or other designations?"

- (a) Each player in the game must play with one or more cards. ~~Each~~Electronic cards are permissible.
- (b) For a game of bingo, each player in the game must obtain the card or cards to be used by that player in the game before numbers or other designations for the game are randomly drawn or electronically determined. Players cannot change cards once play of a particular bingo game has commenced. ~~Electronic cards are permissible.~~
- (b) ~~Electronic cards~~(c) The electronic card in use by a player must be displayed prominently on a video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play. ~~If,~~except when multiple electronic cards are used. When multiple electronic cards

are used by a player, the ~~game must offer the player the capability of~~must be capable of independently seeing each one of his or her cards, and when so independently viewing each one of his or her cards, the electronic card must be displayed prominently on a video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play. At the conclusion of the game, each player must see his or her card with the highest value prize or, if no prize was won, the card closest to a bingo win. ~~At no time shall an electronic card measure less than 2 (two) inches by two (2) inches or four (4) square inches if other than a square card is used. When displayed, the game of bingo, or other games similar to bingo, including the electronic card but excluding any alternative displays, shall fill at least 1/2 of the total space available for display.~~

- (ed) For a game of bingo, each ~~card must contain a five (5) by five (5) grid of spaces.~~ Each space willspace must contain a unique number or other designation which may not appear twice on the same card. The card may contain one "free space" without a specified number or other designation, provided the free space is in the same location on every card in play or available to be played in the game.
- (de) Each ~~technologic aidelectronic player station~~ shall prominently display the following message as applicable: "THIS IS A GAME OF BINGO" or "THIS IS A GAME SIMILAR TO BINGO." ~~Each letter of the display must measure at least two (2) inches in height.~~
- (e) ~~As a variant of bingo, in f)~~ For an "other game similar to bingo," each card must contain at least three (3) ~~equally sized~~ spaces. Each space ~~will~~must contain a unique number or other designation which may not appear twice on the same card. One space may be designated a "free space" provided the card has at least three (3) other spaces.
- (fg) When a number or other designation is covered, the covering must be indicated on the card by a change in the color of the space, a strike-out through the space, or some other readily apparent visual means.
- (gh) All prizes in the game, except for progressive prizes, must be fixed in amount or established by formula and disclosed to all ~~participating~~ players in the game. Random or unpredictable prizes are not permitted.
- (hi) Other patterns may be designated for the award of bonus prizes in addition to the prize to be awarded based on the game-winning pattern. Each such designated pattern or arrangement must ~~also~~ be disclosed to the players upon request before the game begins.
- (ij) The designated winning patterns and the prizes available must be explained in the rules of the game, which must be made available to the players upon request. before the game begins.

- (~~j~~k) Each game must have a winning player and a game-winning prize must be awarded in every game. If the first player, or a subsequent player obtaining the game-winning prize pattern sleeps that pattern, the game must continue until a player successfully achieves the game-winning pattern. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game. ~~A game-winning prize may be less than the amount wagered, provided that the prize is no less than 20% of the amount wagered by the player on each card and at least one cent.~~
- (~~k~~l) A bonus prize in a game that is designated as an “interim prize” must be awarded in a random draw or electronic determination and release of numbers or other designations that is no more than the exact quantity of numbers or designations that are needed for the game-winning player to achieve the game-winning pattern.
- (~~l~~m) A bonus prize in a game that is designated as a “consolation prize” may be awarded after the game-winning pattern is achieved and claimed by a player but only after a subsequent release of randomly drawn or electronically determined numbers or other designations has been made.
- (~~m~~n) A progressive prize may be awarded only if the game also provides a game-winning prize as described elsewhere in this Part.
- (~~n~~o) All prizes in a game, including progressive prizes, must be awarded based on the outcome of the game of bingo, lotto, or other game similar to bingo and may not be based on events outside the selection and covering of numbers or other designations used to determine the winner in the game ~~and the action of the competing players to cover the pre-designated winning patterns.~~ The prize structure must not rely on an additional element of chance other than the play of bingo, lotto, or an other game similar to bingo.
- (~~o~~p) A player station may offer an alternative display of the results of the game in addition to the display of the game results on the electronic bingo card, provided that the player has the option to ~~not view the alternative display and~~ play using only the electronic card display. An alternative display may include game theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. ~~In no instance may the alternative display fill more than 1/2 of the total display space.~~
- (~~q~~) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.5 What are the criteria for meeting the second statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(II), that bingo, lotto, or other games similar to bingo be one “in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?”

- (a) ~~In a game of bingo, the~~The numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool ~~containing 75 such of~~ numbers or other designations ~~and used in the sequence in which they are drawn.~~ Each game ~~will~~must permit the random draw and release or electronic determination of all numbers or designations in the pool. A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.
- (b) ~~As a variant of bingo, in an “other game similar to bingo,” the~~All numbers or other designations used in the game ~~must be randomly drawn or determined electronically from a non-replaceable pool of such numbers or other designations which is greater than the number of spaces on the card used in the game.~~must be used in the sequence in which they are drawn.
- (c) ~~All~~For a game of bingo, all numbers or other designations used in the game must be randomly drawn or electronically determined after the cards to be used in the game have been assigned to or selected by the players in the game. The cards cannot have pre-covered numbers or other designations.
- (d) ~~The~~For a game of bingo, the numbers or other designations randomly drawn or electronically determined must be used in real time and not stored for later use. ~~The numbers or other designations must be used in the sequence in which they are drawn.~~
- (e) ~~To “cover,” a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station at least one time in each round after a set of numbers or other designations is released.~~
- (e) All numbers or other designations must be covered (daubed) when similarly numbered objects are drawn or electronically determined.
- (f) Players must have an opportunity to cover (daub) after every release. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. ~~However, the player must have to opportunity to cover (daub) by touching the screen or a designated button at least one time in each~~

~~round when those numbers or other designations are released, if those numbers or other designations appear on the player's card. Following this action by a player, All numbers or designations on a player's card that have been properly covered (daubed) must be so indicated on the video screen at that player station will display by some readily apparent visible characteristic, such as by being displayed in a different color on the number or designation on that player's card, or marked by a strike-out through the space, or some other readily apparent visible characteristic if that number or designation has been properly covered (daubed) by the player. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed.~~

- (g) ~~Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.~~
- (h) ~~All players in a game, and not just a winning player, must be required by the rules of the game to have an opportunity to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.~~
- (i) ~~A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player's card, but, in any event the game may not proceed in less than two (2) seconds proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards.~~
- (j) ~~Players must cover after each release in order to achieve any winning pattern, except that a player may later cover numbers or designations slept following a previous release ("catch up") for use in obtaining the game winning pattern. Failure to cover after each release results in the player forfeiting use of those numbers or other designations in any other pattern in the game. For bonus prizes and progressive prizes, if a release of numbers or other designations to win the prize associated with any winning pattern obtained in that release. If a player "sleeps," i.e., fails to cover one or more to cover after a release of numbers or other designations, that player cannot be awarded such a prize based on a winning pattern which contains one or more of the numbers or other designations slept by the player. For game winning prizes, if a player sleeps, the player may later obtained in that release. Such player, however, may cover the slept number(s) or other designations and win such prize if that player is the first player to cover all other numbers or designations making up the game winning pattern in a subsequent release ("catch-up") and win the prize associated with any winning pattern obtained in that subsequent release. A prize associated with a previously slept pattern may only be won upon a subsequent release of numbers or other~~

designations and a successful covering of the numbers or other designations in that release.

- (~~k~~j) If a player sleeps the game-winning pattern, the game must continue until a player subsequently obtains and covers (daubs) and claims the game-winning pattern.
- (~~h~~k) All numbers or other designations slept by a player must be clearly and uniquely identified as such by displaying them in a unique color, by drawing a strikeout through them, or by other readily visible means. A player who sleeps a winning pattern must be notified by visible message on the video screen that the pattern was slept. Players who fail to cover (daub) numbers or other designations that establish patterns yielding bonus or progressive prizes also must be notified by visible message on the video screen that the pattern was slept.
- (~~m~~l) After all available numbers or designations that could lead to a game winning prize have been randomly drawn or electronically determined and released (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of time to complete the last required cover (daub) and claim of the prize, or ~~the game~~ may be declared void and wagers returned to players and prizes canceled.
- (~~m~~m) The gaming facility or its employees may not play as a substitute for a player.
- (n) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.6 What are the criteria for meeting the third statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(III), that bingo, lotto, or other games similar to bingo be “won by the first person covering a previously designated arrangement of numbers or designations on such cards?”

- (a) ~~Because the game must be won by the “first person,” each game must be played by multiple players. Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players, and must be designed to broaden participation in each common game by providing reasonable and sufficient opportunity for at least six players to enter the game. Games cannot begin until two (2) seconds have elapsed from the time that the first player elects to play, unless six players enter. Nothing in this section is intended to limit games to six~~

~~players.~~ The system must be designed to provide an opportunity for more than two players to participate in each common game.

- ~~(b) In order for a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all winning patterns in the game.~~
- (b) A game may offer players the opportunity to play at different entry wagers, and the prizes in the game may be increased, or a progressive prize offered, based on a higher entry wager, so long as all prizes are based on achieving pre-designated winning patterns common for all players.
- (c) To establish the game as a contest in which players play against one another, the game must provide for two or more ~~the~~ releases of selected numbers or other designations. Each release ~~will~~must provide one or more ~~numbers~~number(s) or other ~~designations~~designation(s) randomly selected or electronically determined. ~~Each release must take a minimum of two (2) seconds. Numbers~~The numbers or other designations must be released one at a time used in the sequence in which they are drawn. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and claimed. After the game- winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).
- (d) During the first release, the maximum amount of numbers or ~~characters~~other designations to be revealed is one less than the number required for a game winning pattern.
- (e) Each game must have one game- winning pattern or arrangement, which may be won by multiple players simultaneously. Each game-winning pattern or arrangement must consist of at least ~~three~~two (32) spaces, not counting any free spaces used. The game-winning pattern or arrangement must be available to players before the game begins.
- (f) Other patterns or arrangements consisting of at least two (2) spaces each, not counting free spaces, may be used for the award of bonus or progressive prizes, if the patterns or arrangements are designated and made available to players before the game begins.
- (g) Events outside the play of bingo, lotto or an other game similar to bingo may not be used to determine the eligibility for a prize award or the value of a prize.
- (h) The set of selected numbers or other designations in the first release may not contain all of the numbers or other designations necessary to form the game-winning pattern on a card in play in the game. The set may contain the numbers or other designations necessary to form other winning patterns for bonus or

progressive prizes. The quantity of numbers or other designations in the second or subsequent release may not extend beyond the quantity of numbers or other designations necessary to form the first available-eligible game-winning pattern on a card in play in the game. There may be additional releases to allow for additional bonus prizes.

- (i) Prizes cannot be claimed following the first release of numbers or other designations. Two or more releases are required before a player can claim any prize in any game.
- (j) Bonus or progressive prizes may be awarded based on pre-designated patterns provided the award of these prizes is based on the play of bingo, lotto or an other game similar to bingo in the same manner as for the game-winning prize. Bonus or progressive prizes may be based on different pre-designated and pre-announced patterns, on achieving a winning pattern in a specified quantity of numbers or other designations drawn or electronically determined and released, on the order in which numbers or other designations are drawn or electronically determined and released, or on a combination of these criteria. Bonus or progressive prizes may be awarded as interim prizes, before or as the game-winning prize is awarded, or as consolation prizes after the game winning prize is awarded.
- (k) An “ante-up” format, in which a player is required to wager before each release as a condition of remaining in the game, is permissible, provided the game maintains at least two ~~participating~~ players. If only one player remains after one or more releases, that player will be declared the winner of the game-winning prize, and the game will end, provided that player obtains and covers (daubs) the game-winning pattern. If all players leave the game before a game-winning pattern is obtained and covered (daubed) by a player, the game will be declared void and wagers returned to players.
- ~~(l) Each game must provide an equal chance of obtaining any winning pattern for each card played by an active player in the game. The probability of achieving any particular pre-designated winning pattern for a participating player in the game may not vary based on the amount wagered by that player.~~
- ~~(m)~~—The use of a payable is permitted. The order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated winning pattern in a game. A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.
- ~~(n)~~ A game-winning prize must be awarded in every game. If the first player or a subsequent player obtaining the pre-designated game-winning prize pattern sleeps that pattern, the game must continue until a player achieves the game-winning pattern. ~~The same value prize must be awarded to a subsequent game-winning player in the game.~~

- (en) Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used to independently determine a winner of the game or the prizes awarded or change the results of the ~~bingo~~ game in any way.
- (o) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.7 What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an “electronic or electromechanical facsimile?”

- (a) ~~Every pull-tab card or instant bingo ticket must exist in a tangible medium such as paper.~~ Hereafter, the term “pull tabs” also includes the term “instant bingo.” A ~~pre-printed pull-tab must be distributed to the player as paper, plastic, or other tangible medium~~ at the time the pull-tab is purchased. The pull-tab presented to the player must contain the information necessary for the player to determine if that player has won a prize in the game. The information must be presented to the player in a readable format.
- (b) A pull-tab card may contain more than one arrangement of numbers or symbols, but each arrangement must comport with the requirements of this section. The player must pay for all of the arrangements on that pull-tab card in advance of its being dispensed.
- (c) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a “technologic aid” that assists in the sale. The “technologic aid” may also read and display the contents of the pull-tab as it is distributed to the player. The results of the pull-tab may be shown on a video screen that is part of or adjacent to the technologic aid assisting in the sale of the pull-tab.
- (d) The player may also purchase a pull-tab from a person or from a vending unit and place the pull-tab in a separate “technologic aid” that reads and displays the contents of the pull-tab.
- (e) If pull-tabs contain multiple arrangements of numbers or numbers or symbols, the rules for game play must indicate the disposition of a pull-tab in a technologic aid that is only partially played, i.e. all arrangements have not been viewed in the technologic aid.

- (f) A “technologic aid” may also show pull-tab results on a video screen using alternative displays, including game- theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. Options for players found in this alternative display may not determine a winner of the game or the prizes awarded or change the results of the pull-tab game in any way.
- (g) ~~If the pull tab is a winning card, it must be redeemable for a prize when presented at the location in the gaming facility designated by the gaming operator.~~
- ~~(h) A pull tab may not be generated or printed at the player station.~~
- ~~(i) The machine cannot pay out winnings to the player, nor dispense vouchers or receipts representing such winnings.~~
- ~~(j) For technologic aids that are larger than the pull-tab, the machine shall prominently display the following message: “THIS IS THE GAME OF PULLTABS.” Each letter of the display must measure at least two (2) inches in height.~~
- ~~(k) The winning results on the pull-tab shall be no smaller than an 8 point font.~~
- (i) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

§ 546.8 When is a pull tab or instant bingo game an “electronic or electromechanical facsimile?”

- (a) A pull tab game is an “electronic facsimile” if the pull tab does not exist ~~in paper, plastic, or other tangible medium~~ at the point of sale ~~and is displayed only electronically.~~
- (b) Pull-tabs that exist in a tangible medium but that are electronically or optically read and transformed into an electronic medium and made available to the player only as depictions on a video screen (and not presented directly to the player in the tangible medium) are “electronic facsimiles.” where they allow the player to play alone against the machine rather than with or against other players.

§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?

- (a) Except as provided in subsection (1), An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.

- (1) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, must submit these games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part. A requesting party wishing to meet state requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the state requirements. Such requests shall follow the same procedural requirements as outlined in this part.

...

- (g) Secretarial Procedures. Notwithstanding any other requirements, tribes that have a request pending before the Secretary of the Department of the Interior for secretarial procedures as provided for in 25 CFR Part 291, and that satisfy the requirements of 25 CFR §291.3, may elect to continue operating existing games and delay compliance with the requirements of this part pending the final outcome of that request.

§ 546.10 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that “electronic, computer, or other technologic aids” in play in Class II tribal gaming facilities meet the classification standards of this part?

...

- (e) Effective date for operation of games under the classification standards.

- (1) For Class II gaming operations open on the effective date of this part or that open within ~~six~~ twenty-four months of the effective date, certification of the “electronic, computer, or other technologic aids” must be completed and authorization provided by the tribal gaming regulatory authority within ~~six~~ twenty-four months of the effective date. Games and associated equipment not certified within that period must be removed until certification is obtained and authorization given. The Commission Chairman may extend the period for obtaining certification for one or more periods of six months at the request of a tribal gaming regulatory authority based on good cause shown.
- (2) For Class II gaming operations opening ~~six~~ twenty-four months after the effective date, certification and authorization to operate by the tribal gaming regulatory authority must be completed before opening.
- ~~(3) Games played with “electronic, computer, or other technologic aids,” subject to certification under this part and not in a tribe’s operation prior to the effective date, must be authorized for use as Class II by the tribal gaming regulatory authority using the processes described in this Part prior to play in that tribe’s gaming operation.~~

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**SECOND AMENDED AND RESTATED RULES AND REGULATIONS
FOR THE LICENSING AND OPERATION
OF
BINGO GAMES IN MACON COUNTY, ALABAMA**

<u>Section 1:</u> Definitions	2
<u>Section 2:</u> Operation of Bingo Games in Macon County	4
<u>Section 3:</u> Bingo License Required	5
<u>Section 4:</u> Application for License; Submission; Form; Contents	5
<u>Section 5:</u> Issuance of License	7
<u>Section 6:</u> Amendments; Applications; Licenses	7
<u>Section 7:</u> Contents and Display of Licenses	7
<u>Section 8:</u> Fee Proceeds	8
<u>Section 9:</u> General Regulations; Prizes	8
<u>Section 10:</u> Records and Accounting.....	9
<u>Section 11:</u> Enforcement and Supervision; Rules; Bonds	10
<u>Section 12:</u> Revocation of Licenses; Appeal	10
<u>Section 13:</u> Effect of Revocation	11
<u>Section 14:</u> Appeal of Denial of License	11
<u>Section 15:</u> Compliance with Federal Law	12
<u>Section 16:</u> Severability.....	12
<u>Section 17:</u> Amendments	12
<u>Section 18:</u> Effective Date	12

MACON COUNTY BINGO REGULATIONS

The following Second Amended and Restated Rules and Regulations For the Licensing and Operation of Bingo Games in Macon County (hereinafter sometimes referred to as "Rules", "Regulations" or "Rules and Regulations") are hereby promulgated by David M. Warren, Sheriff of Macon County, to regulate the issuance of permits or licenses for and the operation of bingo games by certain nonprofit organizations in Macon County, Alabama pursuant to Act No. 2003-124, Regular Session, 2003, authorizing a referendum on an amendment to the Constitution of Alabama, which said referendum was approved by the voters on November 4, 2003. The primary purpose of this Second Amendment is to encompass the definition of "bingo games" as pronounced by the Attorney General for the State of Alabama and to further adopt the policy of the Attorney General in limiting the conduct of Class B bingo gaming in Macon County thereby allowing the Sheriff to more effectively regulate and enforce the proper conduct of bingo games.

Section 1: Definitions

As used herein the following words shall have the following meanings as described herein, unless the context clearly indicates otherwise:

- (a) "Bingo" or "Bingo games" shall mean any game of chance known as bingo, including any bingo game permitted by federal law, (whether or not electronic, computer, or other technologic aids are used in connection therewith) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, and which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards. The bingo game must incorporate the typical features of traditional bingo, including, but not limited to, a grid of five horizontal and five vertical squares, numbers randomly selected, and a preordained winning pattern. Alternative entertaining displays such as spinning reels and other video or mechanical graphics are permitted but must not affect game play. Just as in traditional bingo halls, players on electronic bingo machines must compete against one another. Consequently, the electronic machines must be linked so that players are competing against each other. Nothing herein is intended to prohibit the award of interim or consolation prizes. Electronic, computer or other technologic aids include any machine or device that assists a player or the playing of a bingo game;

broadens the participation levels in a common game; facilitates communication between and among bingo locations; or allows players to play a game with or against other players rather than with or against a machine. Examples of electronic, computer or other technologic aids include, but are not limited to, dispensers, readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, electronic cards for participants in bingo games, player terminals, central servers containing random number generators for remote player terminals and video displays providing game results in different display modes.

- (b) "Person" shall mean any human being, corporation, partnership, association or other legal entity of any kind whatsoever.
- (c) "Sheriff" shall mean the Sheriff of Macon County, Alabama. Under the Rules and Regulations herein, the Sheriff may designate or otherwise authorize persons of the Macon County Sheriff's Office to perform various duties of the Sheriff set forth herein.
- (d) "Nonprofit organization" shall mean a bona fide organization that is active and in good standing for charitable, educational, or other lawful purposes which operates without profit to its members and/or which has been classified by the Internal Revenue Service as a tax exempt organization.
- (e) "License holder" shall mean any nonprofit organization that has been issued a bingo license by the Sheriff pursuant to these Regulations.
- (f) "Location" shall mean a building, hall, enclosure, room, or outdoor area that complies with all federal, state and local laws and applicable building and fire codes.
- (g) "Class A Bingo License" shall mean a license issued to an applicant who desires to operate paper card bingo only at a qualified location.
- (h) "Class B Bingo License" shall mean a license issued to an applicant who desires to operate any and all games of bingo as defined hereinabove, at a qualified location.
- (i) "Qualified location" for the holder of a Class A Bingo License shall mean a location, as defined above, which has been inspected and approved by the Sheriff for the conduct of bingo games.

- (j) "Qualified location" for the holder of a Class B Bingo License shall mean a location, as defined above, which has been inspected and approved by the Sheriff for the conduct of bingo games and other lawful activities and for which the license applicant shall submit satisfactory evidence that the location has in place the following at all times that any bingo games are being conducted or operated: (i) public liability insurance in an amount not less than \$5,000,000; (ii) if liquor is served, liquor liability insurance in the amount of not less than \$1,000,000; (iii) adequate parking for patrons and employees; (iv) onsite security as prescribed by the Sheriff; (v) onsite first aid personnel as prescribed by the Sheriff; (vi) cash or surety bond in an amount not less than \$1,000,000; (vii) such accounting procedures, controls and security monitoring as necessary to preserve and promote the integrity of the operation of bingo games and to ensure the protection of the charitable license holder and its patrons; (viii) satisfactory evidence that the owner or owners of the location paid at least \$15,000,000 for the land, building and other capital improvements (before depreciation) comprising said location; (ix) satisfactory evidence that the location is fully compliant with the Americans with Disabilities Act ("ADA"); and (x) satisfactory evidence that the owner or owners of such location have been residents of the State of Alabama for at least three (3) years or, if the owner is a partnership, association, corporation, limited liability company, or other business entity, satisfactory evidence that those partners, members, or stockholders of such entity that own collectively at least two-thirds (2/3) of the voting rights and equity interests of such entity, are individuals that have been residents of the State of Alabama for at least three (3) years.
- (k) "Bingo session" shall mean a consecutive period of time up to 24 consecutive hours during which bingo is played on as many as seven (7) days in a given week. A license holder shall not be limited in the number of bingo sessions it operates during any 24 hour period.

Section 2: Operation of Bingo Games in Macon County

The operation of bingo games for prizes or money by nonprofit organizations, as defined herein, shall be allowed in Macon County, pursuant to Amendment No. 744 to the Constitution of Alabama and Act No. 2003-124, provided that the nonprofit organization shall first obtain a bingo license (Class A or B) as set out herein, and abide by all of the Regulations duly promulgated by the Sheriff. No Class B Licensee shall be authorized to operate bingo at any qualified location, as defined herein, unless a minimum of fifteen (15) applicants shall first obtain Class B

Licenses for such location. This restriction shall be noted on any Class B License issued hereafter. ~~At~~ no time shall there be issued and outstanding more than sixty (60) Class B Licenses for the operation of bingo in Macon County.

Section 3: Bingo License Required

No nonprofit organization, as defined herein, shall be allowed to operate a bingo game unless the Sheriff first issues a license to said organization authorizing it to do so. In the event of any controversy as to whether or not a game of chance or activity constitutes a bingo game, as defined herein, for which a license may be issued, the decision of the Sheriff shall control, subject to the rights of appeal as set out herein. The license described herein shall be in a form designated by the Sheriff and shall be in addition to and not in lieu of any other permits or licenses which may be required by law, and no bingo game shall be operated until such time as all required licenses or permits have been obtained. A license holder may hold only one license and that license shall be valid for only one location in Macon County, Alabama. A license is not assignable or transferable and shall become automatically void upon the change of name, dissolution, loss of charter, or, if the license holder is a tax exempt organization under the federal income tax laws, the loss of exemption from taxation under the Internal Revenue Code.

Section 4: Application for License; Submission; Form; Contents

(a) Any nonprofit organization, as defined herein, desiring to obtain a license to operate bingo games hereunder shall make application to the Sheriff on forms prescribed by the Sheriff and shall pay an annual fee of \$250.00 for Class A Bingo Licenses and \$1,000.00 for Class B Bingo Licenses. Such license shall expire and become automatically void on December 31 of the fifth year following its issuance. Renewal applications shall be filed with the Sheriff at least forty-five (45) days prior to January 1 of each calendar year and shall be on forms prescribed by the Sheriff. Renewal applications shall be subject to the same application fee as provided for an original application and shall contain the same information as required in an original application. Should fifteen (15) or more Class B Bingo License holders contract in a given calendar year with the owner of a Class B qualified location, the owner of said Class B qualified location shall pay a business license fee ("Operator's License Fee") of \$250,000 at the time the Class B Bingo License is issued or renewed. In no event shall more than one Operator's License Fee be paid by the owner of a Class B qualified location in any given year.

(b) The Sheriff shall refuse to grant a bingo license or renewal to any applicant qualified hereunder unless and until the applicant fully provides the information required hereunder, such being provided in a form and in sufficient

detail to satisfy the Sheriff of its validity and sufficiency. The Sheriff shall have complete discretion to require any reasonable confirming documentation as to any information required hereunder and shall have a reasonable time to check or confirm by any method available to him the accuracy or validity of any information provided hereunder.

(c) Each application for a bingo license or renewal thereof shall contain the following information and exhibits:

(1) The date of incorporation or other evidence of inception showing existence by the organization for the prescribed period of time.

(2) A copy of the charter, certificate of incorporation, by-laws, or other evidence of legal existence of the organization.

(3) When applicable, a copy of the letter ruling or tax exempt determination letter from the Internal Revenue Service or other proof deemed acceptable by the Sheriff verifying the tax exempt status of the organization named in the application or the parent organization of which the same is a qualified branch, chapter, lodge or post.

(4) The names and residence addresses of each of the officers and directors of the organization, as well as the names and addresses of any members or persons who shall be in charge of or have control over the operation or promotion of bingo games.

(5) The names and addresses of any persons, organizations, or other entities which shall act as sureties for the applicant or to which the applicant is financially indebted in regard to the operation of bingo games.

(6) The exact physical location at which the applicant will conduct the bingo games and if the premises on which the games are to be conducted are not owned by the applicant, the names and addresses of the owners thereof and a copy of all rental, lease, consulting or other agreements with the said owners regarding the use of the premises for the operation of the bingo games.

(7) A statement listing all convictions, if any, for criminal offenses, other than minor traffic offenses, of each of the persons for whom names are required in subsections (4), (5), and (6) above.

Section 5: Issuance of License

Upon receipt of a fully completed and documented application for a license meeting all of the requirements set out herein, the Sheriff shall make such investigation as he may deem necessary or proper of the qualifications of each applicant as required herein and the truth and veracity of the information contained or attached to the application and after making such investigation and after being first satisfied that all qualifications and requirements as set out herein the Sheriff shall issue such license to said applicant upon the terms and conditions herein set forth. As part of said investigation, any person named in paragraphs 4, 5, 6 of Section 4(c) herein may be required to furnish a consent for background and criminal history check.

A Class A Bingo License shall be issued to an applicant who desires to operate paper card bingo only at a qualified location for the holder of a Class A License. A Class B Bingo License shall be issued to an applicant who desires to operate any and all games of bingo, as defined hereinabove, at a qualified location for the holder of a Class B License.

Section 6: Amendments; Applications; Licenses

(a) An applicant may amend an application filed hereunder to correct or complete the information contained therein or to change said information to comply with a change in circumstances at any time prior to the denial thereof by the Sheriff or the issuance of a license thereon, provided that said amendment be made in or on a form satisfactory to the Sheriff and the applicant pays a substitution or amendment fee of \$50.00 per amendment.

(b) A license, once issued, may be amended only upon resubmission of a new, completed application satisfactory to the Sheriff, surrender of the license being amended, and payment of a new annual fee. The Sheriff may deny amendments for any reason for which an original application may be denied.

Section 7: Contents and Display of Licenses

(a) Each bingo license shall contain the name and address of the license holder, the location at which the license holder is permitted to conduct bingo games, the days of the week on which the license holder is permitted to conduct bingo games, the date on which the license was issued and upon which it expires.

(b) The license holder shall display the license conspicuously at the location where bingo is being conducted at all times during the conduct of a bingo game.

Section 8: Fee Proceeds

All monies collected by the Sheriff hereunder shall be paid to the County and placed in a separate bingo account, and deposited in a designated bank located in Macon County within three business days of the collection of said fees. All expenses incurred by the Sheriff in the administration and enforcement hereof shall be paid from this account, with the balance, if any, in said account to be used by the Sheriff for general law enforcement purposes. To the extent allowed by law, in the public interest, the said account shall be subject to audit by the State of Alabama Examiners of Public Accounts.

Section 9: General Regulations; Prizes

(a) No person under the age of 19 years shall be permitted to play any game or games of bingo, nor shall any person under the age of 19 years be permitted to conduct or assist in the operation of any game of bingo.

(b) No bingo license shall be issued to any nonprofit organization, unless the organization shall have been in existence for at least three (3) years in the county immediately prior to the issuance of the permit or license.

(c) Bingo games may be operated on the premises owned or leased by the nonprofit organization operating the bingo games.

(d) A nonprofit organization may enter into a contract with any individual, firm, association or corporation to have the individual or entity operate bingo games or concessions on behalf of the nonprofit organization. A nonprofit organization may pay consulting fees to any individual or entity for any services performed in relation to the operation or conduct of a bingo game.

(e) A nonprofit organization may lend its name or allow its identity to be used by another person or entity in the operating or advertising of a bingo game in which the nonprofit organization is not directly and solely operating the bingo game.

(f) Prizes given by any nonprofit organization for the playing of bingo games shall not exceed the cash amount or gifts of equivalent value set by these Rules and Regulations for any bingo session. For the purposes of these Rules

and Regulations, no single prize given by any nonprofit organization, or on its behalf, for the playing of bingo games shall exceed \$20,000,000 in cash or equivalent value during any bingo session.

(g) No person who has been convicted of a felony offense, and whose civil rights have not been restored by law, shall conduct or in any way participate in the operation of any bingo game permitted hereunder, nor shall any person who has been convicted of any gambling offense be permitted to conduct or in any way participate in the operation of any bingo game permitted hereunder within 12 months of the conviction.

Section 10: Records and Accounting

Each license holder shall keep and maintain the following records and accounts pertaining to each bingo session conducted by it for at least three (3) years from the date of such session:

(a) An itemized list of all gross receipts for each bingo session, which shall include all receipts derived from the sale of bingo cards, entrance fees, donations, or from any other source whatsoever pertaining to the operation of such session. Notwithstanding the foregoing, the holder of a Class B License who has contracted with an individual, firm, association or corporation for the operation of bingo games shall only report the Class B License holder's gross receipts under such contract and provide a copy of such contract to the Sheriff.

(b) An itemized list of all expenses, costs and disbursements, other than prizes, paid or given as a result of the operation of any bingo session, together with the name and address of each person to whom said expenses, disbursements or consideration was paid or given; a receipt or invoice for all items purchased and for all services rendered; and such other records as will adequately reflect the amount and nature of such expenses, costs and disbursements. Notwithstanding the foregoing, the holder of a Class B Bingo License who has contracted with an individual, firm, association or corporation for the operation of bingo games which permits the holder to receive reasonable compensation for the operation of a bingo session net of the costs associated with the operation of the bingo games, including without limitation, building rent, insurance, equipment rental, consulting or management fees, employee expense, utilities, janitorial services, bingo prizes or gifts and the like, shall only be required to maintain a copy of such contract and provide a copy of same to the Sheriff upon request.

(c) All records, receipts, accounts and/or lists required to be kept and maintained hereunder shall be open to inspection by the Sheriff, or his

authorized agents or representatives, during reasonable business hours.

(d) All locations at which bingo games are being held by a license holder, or at which a license holder intends to conduct bingo games, shall be open to the Sheriff, or his authorized representatives, during all times at which bingo games are being conducted and during all other reasonable business hours.

(e) On or before April 15, 2005, and on or before April 15th of each calendar year thereafter, each license holder who held a license for all or any part of the preceding calendar year shall file with the Sheriff a verified copy of all records, receipts, accounts and/or lists required to be kept or maintained hereunder relating to the operation of bingo games for said previous calendar year.

Section 11: Enforcement and Supervision; Rules; Bonds

(a) The Sheriff shall be charged with the duty to and shall enforce and supervise the administration and enforcement of all of the rules, regulations and reporting required hereunder. In addition to these Regulations, the Sheriff shall enforce all applicable criminal and civil laws of the State of Alabama to prevent and discourage any illegal activity.

(b) The Sheriff may require such acceptable sureties and/or bonds which he deems reasonable or necessary to insure proper compliance with these Rules and Regulations and the submission of such acceptable sureties or bonds shall be a condition precedent to the issuance of any license hereunder. The operator and surety or sureties shall be jointly and severally responsible for payment of prizes to winners, said payment to occur no later than the end of the session during which the prize was won.

Section 12: Revocation of Licenses; Appeal

The Sheriff, for good cause shown, may revoke any license issued pursuant hereto if the license holder or any officer, director, agent, employee or member of the license holder, or any person acting in concert with such persons, violates any of the Regulations herein promulgated. Such revocation by the Sheriff shall become effective ten (10) days after written notice of such revocation has been delivered by the Sheriff, or his authorized representative, to any person named in the license application pursuant to Section 4, subsections (c)(4) and (c)(5) hereunder, or such other person as may be involved in the operation of bingo pursuant hereto, unless the license holder shall make a written request for a hearing as to such revocation to the Macon County Commission within said ten (10) day

period. Upon such request for hearing, the Commission shall hold a hearing upon such revocation, subject to rules and regulations for the conduct of meetings and hearings before such Commission, at its next regularly scheduled meeting, or specially called meeting for the purpose of such hearing. Upon such hearing the rendering of a decision adverse to the license holder shall result in the immediate revocation of the subject license. Following a hearing and rendition of an opinion by the Commission upon revocation of a license issued hereunder, either party to said hearing may appeal the same to the Circuit Court of Macon County, Alabama and may request a trial by jury. Pending appeal to the Circuit Court hereunder, the revoked license shall remain revoked until and unless the Circuit Court shall order the same reinstated and shall set a reasonable bond to assure complete compliance with all Rules and Regulations promulgated hereunder pending such appeal.

Section 13: Effect of Revocation

The holder of any license issued pursuant hereto which shall be revoked as herein set out shall return such license to the Sheriff on or before the effective date of such revocation and whether returned or not such license shall be void and not valid beyond the effective date of revocation thereof unless such revocation shall be extended by appeal as provided hereunder. A license holder whose license is revoked in consequence of a violation of any rule or regulation promulgated herein, or other rule or regulation promulgated hereunder, shall be ineligible to apply for or have issued to it another license hereunder for a period of one (1) year after the effective date of such revocation. Nor shall any license be issued to any organization which is directed or controlled by persons listed in the application for license filed pursuant to Section 4, subsections (c)(4) and (c)(5) hereof in regard to the revoked license or to any organization of which the membership is substantially the same as any organization whose license has been revoked hereunder, for a period of one (1) year after the effective date of such revocation.

Section 14: Appeal of Denial of License

Any nonprofit organization whose application for a license hereunder shall be denied by the Sheriff pursuant to these Regulations shall have the right to appeal such denial to the Macon County Commission and to the Circuit Court of Macon County in the same manner as an appeal of a revocation of a license issued hereunder may be appealed pursuant hereto provided, however, that such organization shall not operate any bingo game until such application shall have been granted, and a license issued, pursuant to any order of the said Commission or Court.

Section 15: Compliance With Federal Law

All electronic, computer, technologic aids and other devices used in connection with the operation of licensed bingo games conducted in Macon County under the authority of Amendment No. 744 to the Constitution of Alabama and permitted under the Rules and Regulations for the Licensing and Operating of Bingo Games promulgated by the Sheriff of Macon County are expressly enumerated as lawful and exempted from the provisions of 15 U.S.C. § 1172.

Section 16: Severability

The provisions hereto and the Regulations promulgated hereunder are severable. If any part hereof shall be declared invalid or unconstitutional, such declaration shall not affect any parts hereof which shall remain.

Section 17: Amendments

The Sheriff reserves the right to amend these Regulations from time to time as necessary, but no amendments shall be effective unless in writing and signed by the Sheriff.

Section 18: Effective Date.

The effective date of these Second Amended and Restated Rules and Regulations is January 1, 2005.

Issued this the 6 day of January, 2005.

A handwritten signature in black ink, appearing to read "Dip M. Warren", written over a horizontal line.

David M. Warren
Sheriff of Macon County, Alabama

COMMENTARY TO SECOND AMENDED AND RESTATED BINGO REGULATIONS

The Attorney General for the State of Alabama has recently conducted an exhaustive investigation and review of gaming activities in the State of Alabama, including but not limited to, bingo games conducted in Macon County, Alabama, pursuant to Amendment No. 744 of the Constitution of Alabama. In response to the Attorney General's recent findings and pronouncements, the First Amended and Restated Rules and Regulations For the Licensing and Operation of Bingo Games in Macon County (the "Macon County Bingo Regulations") are hereby amended and restated to comport and comply with the Attorney General's definition of bingo games and policy to limit Class B bingo gaming activities in Macon County, Alabama, at a reasonable level whereby the Sheriff can more adequately and effectively regulate and enforce the proper conduct of such bingo games. Accordingly, the following changes have been made to the Macon County Bingo Regulations:

Section 1(a): The definition "Bingo" or "Bingo games" is hereby amended to add four new sentences to be inserted after the first sentence and before the second sentence of the current definition in order to adopt the Attorney General's pronouncement of bingo games that are lawful in the State of Alabama.

Section 2: A new sentence has been added to the end of Section 2 to limit the number of Class B Licenses that may be issued in order to follow the policy of the Attorney General to limit Class B bingo gaming activities in Macon County, Alabama, and to allow the Sheriff to more effectively regulate and enforce the proper conduct of such bingo games.

Section 4: The second sentence has been revised to allow licenses to be issued for five (5) years, rather than one (1) year. This revision will reduce and avoid additional administrative costs of review and processing of renewal applications for the Sheriff, although the annual license fee will still be required.